

DEPOSITION OF CLARENCE MOSES

MARCH 17, 2006

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

THE ESTATE OF ERIK A. POWELL,) Civil No.
THROUGH PERSONAL REPRESENTATIVE) CV04-00428 LEK
MARY K. POWELL; THE ESTATE OF)
JAMES D. LAUGHLIN, THROUGH PERSONAL)
REPRESENTATIVE RAGINAE C. LAUGHLIN;)
MARY K. POWELL, INDIVIDUALLY;)
RAGINAE C. LAUGHLIN, INDIVIDUALLY;)
CHLOE LAUGHLIN, A MINOR, THROUGH)
HER NEXT FRIEND, RAGINAE C.)
LAUGHLIN,)

Plaintiffs,)

vs.)

CITY AND COUNTY OF HONOLULU,)

Defendant,)

and)

CITY AND COUNTY OF HONOLULU,)

Third-Party Plaintiff,)

vs.)

UNIVERSITY OF HAWAII, a body)
Corporate; JOHN DOES 1-10, JANE)
DOES 1-10; DOE CORPORATIONS and)
DOE ENTITIES,)

Third-Party Defendants.)

DEPOSITION OF CLARENCE MOSES

Taken on behalf of Plaintiffs at the Law Offices of Ian L. Mattoch, 737 Bishop Street, Suite 1835, Honolulu Hawaii, commencing at 1:00 p.m. on March 17, 2006, pursuant to Notice.

Before: WILLIAM T. BARTON, RPR, CSR NO. 391

EXHIBIT "15"

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1 And by the same time, I looked again, I waited 30
2 seconds, and I didn't see anything, I kind of knew that he
3 wasn't going to be swimming again. So I took off running
4 with the equipment.

5 Q. This whole time you're indicating with your hands
6 that you're holding binoculars?

7 A. Yes.

8 Q. You first saw him swimming, and this was with
9 binoculars?

10 A. At first, I seen him with my eye. After that,
11 when he tried to climb up, then I grabbed my binos.

12 Q. Why did the first sighting catch your eye?

13 A. Anybody who swims with a high arm, you can kind
14 of see the arm. Looked like he was swimming regular to me.
15 It didn't really catch -- give me any kind of warning until
16 he tried to climb up the side. And then he -- when he let
17 go, I knew something -- usually people can hang on for a
18 long while, at least swim back. But he just dropped
19 straight down.

20 Q. Were there other swimmers in the area where he
21 was swimming?

22 A. At that time, no.

23 Q. So after you saw like, he dropped the third
24 time, was it?

25 A. Second time.

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1 Q. Is that when you started --

2 A. That's when Neves hit the end of the beach. I
3 was still watching, because I was hoping he would pop up
4 again, and by then, Neves -- another minute or so, he could
5 have grabbed him. I was kind of hoping that he wasn't too
6 tired. I was kind of hoping for the best. But I figured
7 if I take off running now, and he grabs him, and he's okay
8 then, you know, I can take my time instead of just run out.

9 Q. Now, you said Neves had -- at the point, where
10 the body dropped down a second time, Neves was at the end
11 of the beach. He still had to run down the ledge?

12 A. Yeah, run up the ledge.

13 Q. And then you were following him the whole time
14 with the binoculars?

15 A. Not him. The swimmer. I just looked over, and I
16 seen him, then I went back to the swimmer.

17 Q. Were you guys in contact via radio?

18 A. No, we only got two radios down there, two
19 towers. We can't be running the radios around. He took
20 off. I told him took off, and I had the radio, because I
21 knew the lieutenant, whoever was supervisor, lieutenant,
22 was on his way already.

23 Q. Was that Bregman?

24 A. I think so, yeah.

25 Q. So you had already alerted Bregman there was a

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1 possible drowning?

2 A. No, possible Condition 5. Condition 4, meaning
3 resuscitation. It was a possible. But I called him
4 anyway, just I didn't want to take any chances.

5 Q. What is a Condition 5?

6 A. Well, that's wrong. We'll get a Condition 4 on
7 him. That means resuscitation. Meaning victim, no pulse,
8 no breathing.

9 So since he was kind of sketchy, I called for
10 quick backup. He'll rush more if you give him Condition 4
11 than Condition 2. Condition 2 means minor First Aid.

12 Q. What is Condition 3?

13 A. Patient with not breathing but a pulse. But it's
14 still emergency.

15 Q. Do you know what a Code 5 is?

16 A. No. Once in a while, we get mixed up between 4
17 and 5. That's the only thing I can say about that one.

18 Q. After that, you saw the guy drop a third time,
19 right?

20 A. No, he only dropped two times.

21 Q. Sorry. And you saw Neves was at the end of the
22 beach. Then what happened?

23 A. Then, like I said, I was watching, hoping he
24 would be floating, slapping his arms maybe, trying to stay
25 afloat. Neves didn't get there in time. I waited and

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1 Neves -- he was almost there. I was still watching. I
2 didn't see no arms. I didn't see anything at all. Nothing
3 floating, whatever.

4 When he got there, he was looking around, and I
5 kind of knew, so I dropped my -- grabbed my stuff, grabbed
6 my equipment and took off running.

7 Q. What equipment did you take?

8 A. Usually, I just carry the O2, First Aid.

9 Q. Do you know what Neves took with him?

10 A. He took his basic tube, fin, mask, snorkel fins
11 and tube. I needed him to get out there, quick. The guy
12 who runs with the less equipment gets there quicker.
13 That's why the second guy carries all the bulky stuff. It
14 takes a little longer.

15 Q. You said you didn't see anything, meaning that
16 the body had dropped under water?

17 A. He was at water level. I didn't see no arms,
18 like swimming. So that indicated that he wasn't exactly
19 trying to stay afloat. But at the same time, I didn't know
20 if he was face up or face down. I couldn't see him. It
21 was basically he could have been anywhere at the time.

22 Q. So then you were running out at this point to
23 meet --

24 A. Neves went in. Just before -- well, just before
25 I started running to grab my stuff, Bregman drove by with